

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES,)	CASE NO. 4:02CR260
)	
Plaintiff,)	JUDGE JAMES S. GWIN
)	Magistrate Judge George J. Limbert
v.)	
)	
ELIJAH UNDERWOOD,)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Defendant.)	

This matter was referred to the undersigned in order to conduct appropriate proceedings, including an initial appearance, detention hearing, preliminary exam and supervised release hearing, and all matters in accordance with Criminal Rule 32.1, except for sentencing. On December 16, 2005, the undersigned conducted an initial appearance regarding the revocation of supervised release, appointed Attorney James S. Gentile as Defendant's counsel and set a bond.

On December 22, 2005, the undersigned held the preliminary examination. At that hearing, Defendant was represented by Assistant Attorney James S. Gentile, and the Government was represented by Linda H. Barr, Assistant United States Attorney.

The violation report prepared by the United States Probation Officer on November 22, 2005 in the instant matter indicated that Defendant had committed the following Supervised Release Violations:

1. New Law Violation - On 08/11/2005, the offender was arrested by the Austintown Police Department and was charged with two counts of Possession of Dangerous Drugs, both felonies of the fifth degree.
2. Failure to Notify the PO of Law Enforcement Contact - On August 11, 2005, the offender was arrested by the Austintown Police Department. He failed to notify his probation officer within 72 hours.

Supervised Release Violation Report at 1.

At the hearing and through his counsel, Defendant willingly stipulated that the government could prove by a preponderance of the evidence that he violated the first violation. Further, Defendant, through counsel willingly admitted to the second violation.

The Government did not move for detention in the instant matter and the undersigned continued his bond.

CONCLUSION AND RECOMMENDATION

Based upon the Violation Report and Defendant's stipulations, the undersigned finds that Defendant has knowingly and voluntarily admitted to violating Numbers 1 and Number 2 of the Violation Report. Consequently, the undersigned recommends that the Court find that Defendant has violated the terms of his supervised release.

Dated: December 23, 2005

/s/George J. Limbert
George J. Limbert
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of service of this notice. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).